ADDITIONAL COSPONSORS

S. 714

At the request of Mr. WEBB, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 714, a bill to establish the National Criminal Justice Commission.

S. 1154

At the request of Ms. KLOBUCHAR, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1154, a bill to amend the Public Health Service Act to facilitate emergency medical services personnel training and certification curriculums for military veterans.

S. 1438

At the request of Mrs. GILLIBRAND, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 1438, a bill to express the sense of Congress on improving cybersecurity globally, to require the Secretary of State to submit a report to Congress on improving cybersecurity, and for other purposes.

S. 1598

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1598, a bill to amend the National Child Protection Act of 1993 to establish a permanent background check system.

S. 1672

At the request of Mr. REED, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1672, a bill to reauthorize the National Oilheat Research Alliance Act of 2000.

S. 1709

At the request of Ms. STABENOW, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1709, a bill to amend the National Agricultural Research, Extension, and Teaching Policy Act of 1977 to establish a grant program to promote efforts to develop, implement, and sustain veterinary services, and for other purposes.

S. 2747

At the request of Mr. BINGAMAN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2747, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 2781

At the request of Ms. MIKULSKI, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 2781, a bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability.

S. 2935

At the request of Mr. GRASSLEY, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2935, a bill to clarify that the revocation of an alien's visa or other documentation is not subject to judicial review.

S. RES. 164

At the request of Mr. FEINGOLD, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. Res. 164, a resolution amending Senate Resolution 400, 94th Congress, and Senate Resolution 445, 108th Congress, to improve congressional oversight of the intelligence activities of the United States, to provide a strong, stable, and capable congressional committee structure to provide the intelligence community appropriate oversight, support, and leadership, and to implement a key recommendation of the National Commission on Terrorist Attacks Upon the United States.

AMENDMENT NO. 3302

At the request of Mr. GREGG, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Florida (Mr. LEMIEUX) were added as cosponsors of amendment No. 3302 proposed to H.J. Res. 45.

AMENDMENT NO. 3304

At the request of Mr. SESSIONS, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of amendment No. 3304 intended to be proposed to H.J. Res. 45.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 396—TO ENABLE EACH NEWLY CONSTITUTED SENATE TO CARRY OUT ITS RESPONSIBILITY TO DETERMINE THE RULES OF ITS PROCEEDINGS AT THE BEGINNING OF EACH CONGRESS

Mr. UDALL of New Mexico submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 396

Whereas article I, section 5 of the United States Constitution provides that ''Each House may determine the Rules of its Proceedings'';

Whereas it is a longstanding common law principle, upheld in Supreme Court decisions, that one legislature cannot bind subsequent legislatures;

Whereas rule V of the Standing Rules of the Senate states that ''the Rules of the Senate shall continue from one Congress to the next unless they are changed as provided in these rules'';

Whereas rule XXII of the Standing Rules of the Senate requires an affirmative vote of two-thirds of Senators present and voting to limit debate on a measure or motion to amend the Senate Rules; and

Whereas rule V and rule XXII of the Standing Rules of the Senate, taken together, can effectively deny the Senate the opportunity to exercise its constitutional right to determine the Rules of its Proceedings under article I, section 5, thus allowing one Congress to bind its successors; Now, therefore, be it

Resolved, That upon the expiration of the Standing Rules of the Senate at the Sine Die Adjournment of the 111th Congress, the Senate shall proceed in accordance with article I, section 5 of the Constitution to determine the Rules of its Proceedings by a simple majority vote.

Mr. UDALL of New Mexico. Mr. President, it is with great humility and respect for the institution of the Senate, reverence for the many great men and women who have served here, and affection for my colleagues that I rise today to discuss what I believe is an issue of great importance.

Reflecting on my first year as a Member of this body, I have come to believe that we are failing to represent the best interests of the American people. We as elected representatives have a duty to our constituents. But partisan rancor and the Senate's own incapacitating rules often prevent us from fulfilling that duty.

While I am convinced that our inability to function is our own fault, we have the authority within the Constitution to act. Article I, section 5, of our Constitution states in clear language that ''Each House may determine the rules of its proceedings. . . .''

Yet at the beginning of the 111th Congress, we implicitly acquiesced to the rules adopted decades and sometimes more than a century ago, rules that most Members of this Senate have never voted to adopt.

Today these rules put in place generations ago make effective legislating nearly impossible. Specifically, under rule XXII, it is not possible to limit debate, end a filibuster, invoke cloture without 60 votes. Such cloture votes used to occur perhaps seven or eight times during a congressional session. But in the 110th Congress alone, there were 112 cloture votes, and most of these were occasioned simply by the threat of a filibuster.

The American people spoke loudly in the 2008 election. They clearly desired a President and a Congress that would set a new direction. It was not necessarily an endorsement of one ideology over another but instead a call for us to put partisanship aside and to take care of the country's business.

Although this Chamber was able to pass historic health care legislation last year, we are far from finished. More than anything, what the health care debate has demonstrated is how difficult the rules have made our legislative process. And it is not just health care. Other important pieces of legislation still languish, Federal judicial vacancies remain unfilled, and many of the President's appointees to key positions are still not confirmed. The American people deserve better.

I applaud Leader REID for what he has been able to accomplish, given the way this Chamber's rules have been used to impede progress. Senate rules are designed to allow for substantive debate and to protect the views of the minority, as our Founders intended. But they have been used instead to prevent the Senate from beginning to even debate critical legislation.

Protecting the views of the minority makes sense, but not at the expense of the will of the majority. Indeed, as the rules are being used today, a single Senator can hold a bill hostage until his or her demands are met. This is not the spirit of compromise and collegiality our Founders envisioned for this body.

Even worse, the rules as they exist today make any effort to change them a daunting process. Under the current Standing Rules of the Senate, rule V states:

> The Rules of the Senate shall continue from one Congress to the next unless they are changed as provided in these rules.

As adopted in 1975, rule XXII requires two-thirds of Senators present and voting to agree to end debate on a change to the Senate rules, in most cases 67 votes. Taken together, these two rules effectively deny the Senate the opportunity to exercise its constitutional right to determine the rules of its proceedings and serve to bind this body to rules adopted by its predecessors.

Many of my colleagues will argue that the Senate is not designed to be efficient, that the use of filibusters and delay tactics was what the Founders intended. They will quote George Washington's comment to Thomas Jefferson that the Framers created the Senate to cool House legislation, just as a saucer was used to cool hot tea. While I understand their argument, I do not believe that the Framers envisioned the Senate as the graveyard for good ideas. We can have lengthy debate about the merits of legislation, but there should come a time when we actually vote on the bill. We can discuss the qualifications of a judicial nominee, but each nominee deserves an upor-down vote. To quote one of this body's most esteemed Members, Senator Henry Cabot Lodge:

> To vote without debating is perilous, but to debate and never vote is imbecile.

This is a bipartisan issue. I express my opinions today as a member of the majority. But they will not change if I become a member of the minority party.

We are all too aware of the power of rule XXII, the filibuster rule, adopted in 1975. Yet except for the distinguished Senators BYRD, INOUYE, and LEAHY, none of us—Republicans or Democrats alike—has ever voted to adopt this rule.

Opponents of rules reform argue that the Senate is a continuing body and, therefore, the rules must remain in effect from one Congress to the next. I disagree with this assertion. Even if the Senate is deemed to have continued because two-thirds of its Members remain in office, there is no reason that the rules must remain in effect.

Many things change with a new Congress. It is given a new number. All of the pending bills and nominations from the previous Congress are dead, and each party may choose its leadership. If the party in the majority changes, the new Senate becomes substantially different from the last.

Senators of both parties have argued that the rules may change with a new Congress, as my esteemed colleague from Utah, Senator HATCH, stated in a National Review article in 2005:

> The Senate has been called a ''continuing body.'' Yet language reflecting this observation was included in Senate rules only in 1959. The more important, and much older, sense in which the Senate is a continuing body is its ongoing constitutional authority to determine its rules. Rulings by vice presidents of both parties, sitting as the President of the Senate, confirm that each Senate may make that decision for itself, either implicitly by acquiescence or explicitly by amendment. Both conservative and liberal legal scholars, including those who see no constitutional problems with the current filibuster campaign, agree that a simple majority can change Senate rules at the beginning of a new Congress.

I agree with Senator HATCH. And I agree with our good friend Senator Ted Kennedy who said:

> The notion that a filibuster can be used to defeat an attempt to change the filibuster rule cannot withstand analysis. It would impose an unconstitutional prior restraint on the parliamentary procedure in the Senate. It would turn rule XXII into a Catch-XXII.

The early history of this body suggests that the use of unlimited debate as a tool of obstruction was not an issue.

The original Senate rules adopted under article I, section 5, of the Constitution included a provision allowing a Senator to make a motion ''for the previous question.'' If passed, the motion allowed a simple majority of Senators to halt debate on a pending issue. This simple rule for limiting debate was inadvertently dropped in 1806—perhaps for lack of need—and the Senate entered a period with no means to limit debate. It was not until the 1830s that the Senate saw the first filibusters, as Members recognized that the lack of any rule to limit debate could be used to effectively block legislation opposed by even a minority of the minority. It was not, however, until 1917 that the Senate adopted a formal cloture rule.

Woodrow Wilson's armed ships bill had just been filibustered by 11 Senators. The President was furious, demanding a change in Senate procedural rules. In response, Montana Senator Thomas Walsh, citing article I, section 5, of the Constitution introduced the constitutional option.

Walsh argued that a newly convened Senate was not bound by the rules of the previous Senate and could adopt its own rules, including a rule to limit debate. He reasoned that every new Senate had the right to adopt rules, saying that ''it is preposterous to assume that [the Senate] may deny future majorities the right to change'' the rules. In response to Walsh's proposal, the Senate reached a compromise and amended rule XXII. The compromise permitted cloture on any pending measure at the will of two-thirds of all Senators present and voting.

Back then, the toxic partisanship we face today had not yet poisoned the system, but the manipulative use of the filibuster had already taken hold. It was used to block some of the most important legislation of that time—anti-lynching bills in 1922, 1935, and 1938, and anti-race discrimination bills were blocked almost a dozen times starting in 1946.

By the 1950s, a bipartisan group of Senators had had enough. On behalf of himself and 18 other Senators, New Mexico's Clinton Anderson, my predecessor, attempted to limit debate and control the use of a filibuster by adopting the 1917 strategy of Thomas Walsh. Just as Senator Walsh did almost four decades earlier, Senator Anderson argued that each new Congress brings with it a new Senate entitled to consider and adopt its own rules. On January 3, 1953, Anderson moved that the Senate immediately consider the adoption of rules for the Senate of the 83rd Congress.

Anderson's motion was tabled, but he introduced it again at the beginning of the 85th Congress. In the course of that debate, Senator Hubert Humphrey presented a parliamentary inquiry to Vice President Nixon, who was presiding over the Senate. Nixon understood the inquiry to address the basic question, ''Do the rules of the Senate continue from one Congress to another?'' Noting that there had never been a direct ruling on this question from the Chair, Nixon stated that:

> While the rules of the Senate have been continued from one Congress to another, the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the constitution itself, cannot be restricted or limited by rules adopted by a majority of a previous Congress. Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional.

Nixon's opinion was consistent with the longstanding common law principle, upheld in Supreme Court decisions, that one legislature cannot bind subsequent legislatures.

Nixon went on to explain that under the Constitution, a new Senate had three options to deal with the rules at the beginning of a new Congress: No. 1, proceed under the rules of the previous Congress and ''thereby indicate by acquiescence that those rules continue in effect''; No. 2, vote down a motion to adopt new rules and thereby ''indicate approval of the previous rules''; and No. 3, ''vote affirmatively to proceed with the adoption of new rules.''

Despite Nixon's opinion from the chair, Anderson's motion was tabled. In 1959, Anderson raised the constitutional option again at the start of the 86th Congress, with the support of some 30 other Senators. This time, he raised the ire of then-Majority Leader Johnson, who realized that a majority of Senators might join Anderson's cause. To prevent Anderson's motion from receiving a vote, Johnson came forward

with his own compromise—changing rule XXII to reduce the required vote for cloture to ''two-thirds of Senators present and voting.'' And to appease a small group of Senators, Johnson also included new language that stated that the rules continued from one Congress to the next unless they were changed under the rules. It was a move that would effectively bind all future Senates.

Throughout his career, Clinton Anderson relied on the constitutional option as the basis to ease or at least reconsider the cloture requirements laid out in rule XXII. As he said in 1959:

My motion does not prejudge the nature of the rules which the Senate in its wisdom may adopt, but it does declare in effect that the Senate of the 85th Congress is responsible for and must bear the responsibility for the rules under which the Senate will operate. That responsibility cannot be shifted back upon the Senate of past Congresses.

In 1975, 2 years after Anderson left office, the Senate adopted the rule we operate under today: It takes the vote of ''three-fifths of all Senators duly chosen and sworn'' to cut off debate or the threat of unlimited debate.

As the junior Senator from New Mexico, I have the honor of serving in Senator Clinton Anderson's former seat, and I have the desire to take up his commitment to the Senate and his dedication to the principle that in each new Congress, the Senate should exercise its constitutional power to determine its own rules. Let me be very clear. I am not arguing for or against any specific changes to the rules, but I do believe each Senate has the right, according to the Constitution, to determine all of its rules by a simple majority vote.

As my distinguished colleague Senator BYRD, the longest serving Member in the history of Congress, once said:

The Constitution in article 1, section 5, says that each House shall determine the rules of its proceedings. Now we are at the beginning of Congress. This Congress is not obliged to be bound by the dead hand of the past.

It is time for reform. There are many great traditions in this body that should be kept and respected, but stubbornly clinging to ineffective and unproductive procedures should not be one of them. There is another way.

The resolution I am introducing today is simple. It would enable the 112th Congress to carry out its responsibility to determine the rules of its proceedings in accordance with the Constitution. This is not to say that between now and the beginning of the 112th Congress we cannot use our political will to find a way to avoid the gridlock of 2009. It is to say that at the beginning of the 112th Congress, the Senate can exercise its constitutional right to adopt its rules of procedure by a simple majority vote. The Senate may choose to adopt new rules or it may choose to continue with some or all of the rules of the previous Congress. The point is, it is our choice. It is our responsibility.

As Clinton Anderson said:

It is a responsibility that cannot be shifted back upon the Senate of past Congresses.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3306. Mr. BAUCUS proposed an amendment to amendment SA 3299 proposed by Mr. BAUCUS (for Mr. REID) to the joint resolution H.J. Res. 45, increasing the statutory limit on the public debt.

SA 3307. Mr. SPECTER (for Mr. CRAPO) proposed an amendment to the resolution S. Res. 373, designating the month of February 2010 as ''National Teen Dating Violence Awareness and Prevention Month''.

TEXT OF AMENDMENTS

SA 3306. Mr. BAUCUS proposed an amendment to amendment SA 3299 proposed by Mr. BAUCUS (for Mr. REID) to the joint resolution H.J. Res. 45, increasing the statutory limit on the public debt; as follows:

At the appropriate place, insert the following:

SEC. 1. SHORT TITLE.—This Act may be cited as the ''Bipartisan Task Force for Responsible Fiscal Action Act of 2009.''

SEC. 2. ESTABLISHMENT OF TASK FORCE.—Title III of the Congressional Budget Act of 1974 (2 U.S.C. 631 et seq.) is amended by adding at the end the following new section:

''ESTABLISHMENT OF TASK FORCE FOR RESPONSIBLE FISCAL ACTION

''SEC. 316. (a) DEFINITIONS.—In this section:

''(1) TASK FORCE.—The term ''Task Force'' means the Bipartisan Task Force for Responsible Fiscal Action established under subsection (b)(1).

''(2) TASK FORCE BILL.—The term ''Task Force bill'' means a bill consisting of the proposed legislative language of the Task Force recommended under subsection (b)(3)(B) and introduced under subsection (e)(1).

''(3) FISCAL IMBALANCE.—The term ''fiscal imbalance'' means the gap between the projected revenues and expenditures of the Federal Government.

''(b) ESTABLISHMENT OF TASK FORCE.—

''(1) ESTABLISHMENT.—There is established in the legislative branch a task force to be known as the ''Bipartisan Task Force for Responsible Fiscal Action''.

''(2) PURPOSES.—

''(A) REVIEW.—The Task Force shall review the fiscal imbalance of the Federal Government, including—

''(i) analyses of projected Federal expenditures;

''(ii) analyses of projected Federal revenues; and

''(iii) analyses of the current and long-term actuarial financial condition of the Federal Government.

''(B) IDENTIFY FACTORS.—The Task Force shall identify factors that affect the long-term fiscal imbalance of the Federal Government.

''(C) ANALYZE POTENTIAL COURSES OF ACTION.—The Task Force shall analyze potential courses of action to address factors that affect the long-term fiscal imbalance of the Federal Government.

''(D) PROVIDE RECOMMENDATIONS AND LEGISLATIVE LANGUAGE.—The Task Force shall provide recommendations and legislative language that will significantly improve the long-term fiscal imbalance of the Federal Government, including recommendations addressing—

''(i) Federal expenditures;

''(ii) Federal revenues; and

''(iii) the current and long-term actuarial financial condition of the Federal Government.

''(E) PRIORITY TO ELIMINATING WASTE.—The Task Force shall give priority to reducing or eliminating waste, fraud, abuse, and the nonpayment of taxes already owed.

''(3) DUTIES.—

''(A) IN GENERAL.—The Task Force shall address the Nation's long-term fiscal imbalances, consistent with the purposes described in paragraph (2), and shall submit the report and recommendations required under subparagraph (B).

''(B) REPORT, RECOMMENDATIONS, AND LEGISLATIVE LANGUAGE—

''(i) IN GENERAL.—Not earlier than November 3, 2010, and not later than November 9, 2010, the Task Force shall vote on a report that contains—

''(I) a detailed statement of the findings, conclusions, and recommendations of the Task Force;

''(II) the assumptions, scenarios, and alternatives considered in reaching such findings, conclusions, and recommendations; and

''(III) proposed legislative language to carry out such recommendations as described in paragraph (2)(D).

''(ii) APPROVAL OF REPORT.—The report of the Task Force submitted under clause (i) shall require the approval of not fewer than 14 of the 18 members of the Task Force.

''(iii) ADDITIONAL VIEWS.—A member of the Task Force who gives notice of an intention to file supplemental, minority, or additional views at the time of final Task Force approval of the report under clause (ii), shall be entitled to not less than 3 calendar days in which to file such views in writing with the staff director of the Task Force. Such views shall then be included in the Task Force report and printed in the same volume, or part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Task Force report may be printed and transmitted immediately without such views.

''(iv) TRANSMISSION OF REPORT.—No later than November 15, 2010, the Task Force shall submit the Task Force bill and final report to the President, the Vice President, the Speaker of the House, and the majority and minority leaders of both Houses.

(v) REPORT TO BE MADE PUBLIC.—Upon the approval or disapproval of the Task Force report pursuant to clause (ii), the Task Force shall promptly make the full report, and a record of the vote, available to the public.

''(4) MEMEBERSHIP.—

''(A) IN GENERAL.—The Task Force shall be composed of 18 members designated pursuant to subparagraph (B).

''(B) DESIGNATION.—Members of the Task Force shall be designated as follows:

''(i) The President shall designate 2 members, one of whom shall be the Secretary of the Treasury, and the other of whom shall be an officer of the executive branch.

''(ii) The majority leader of the Senate shall designate 4 members from among Members of the Senate.

''(iii) The minority leader of the Senate shall designate 4 members from among Members of the Senate.

''(iv) The Speaker of the House of Representatives shall designate 4 members from among Members of the House of Representatives.

''(v) The minority leader of the House of Representatives shall designate 4 members from among Members of the House of Representatives.